

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

United States of America,)	
)	CR-12-2519-TUC-DCB
Plaintiff,)	
v.)	
)	
Jagan Bruce,)	ORDER
)	
Defendant.)	
)	
_____)	

This matter was referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1)(B) and the local rules of practice of this Court for hearing and a Report and Recommendation (R&R) on the Defendant's Motion to Suppress. Before the Court is the Magistrate Judge's Report and Recommendation (Doc. 170) on the Defendant's Motion to Suppress. The Magistrate Judge recommends to the Court that the Motion to Suppress may be denied. The Defendant filed an Objection (Doc. 171) to this Recommendation and the Government filed a Response (Doc. 174). The Court now rules without the need for oral argument based on the thorough record before it.

STANDARD OF REVIEW

When objection is made to the findings and recommendation of a magistrate judge, the district court must conduct a de novo review. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003).

DISCUSSION

The R&R addresses the vehicle stop and continued detention in the context of collective knowledge. The Objection addresses both the evidence collected after a traffic stop and "prolonged" detention after the stop for lack of reasonable suspicion that criminal activity of the Defendant as a passenger in the vehicle, particularly questioning the collective knowledge of the law enforcement officers involved. The Government objects to the mischaracterization of the evidence as a whole in the Defendant's Objection.

The Fourth Amendment right to be secure from unreasonable searches and seizures by the government "applies to all seizures of the person, including seizures that involve only a brief detention short of traditional arrest." *United States v. Brignoni-Ponce*, 422 U.S. 873, 878(1975). A brief investigatory stop does not violate the Fourth Amendment, however, "if the officer has a reasonable suspicion supported by articulable facts that criminal activity 'may be afoot.'" *United States v. Sokolow*, 490 U.S. 1, 7 (1989).

In determining whether a stop was justified by a reasonable suspicion, a court should consider whether, in light of the totality of the circumstances, the officer had "a particularized and objective basis for suspecting the particular person stopped of criminal activity." *United States v. Cortez*, 449 U.S. 411, 417-18(1981). For purposes of this analysis, the totality of the circumstances includes "objective observations, information from police reports, if such are available, and consideration of the modes or patterns of operation of certain kinds of law-breakers." *Id.* at 418. In order to uphold the validity of the investigatory stop, a court must discern from these factors "a

1 particularized and objective basis for suspecting the particular person
2 stopped of criminal activity." *Cortez*, 449 U.S. at 417-18. Often, the
3 data in the record seems equally capable of supporting an innocent
4 explanation as a reasonable suspicion. In such cases, the Supreme Court
5 directs a court to give due weight to the factual inferences drawn by law
6 enforcement officers, *United States v. Arvizu*, 534 U.S. 266, 277 (2002),
7 and has noted that officers may make reasonable deductions and inferences
8 based on their experience and specialized training that "might well elude
9 an untrained person." *Id.* at 273. In this vein, even when factors
10 considered in isolation from each other are susceptible to an innocent
11 explanation, they may collectively amount to a reasonable suspicion. *Id.*
12 at 274. The Supreme Court prohibits courts from adopting a
13 "divide-and-conquer analysis" by looking at each factor in isolation and
14 according it no weight if it is susceptible to an innocent explanation.
15 *Arvizu*, 534 U.S. at 274. A reasonable suspicion of criminal activity may
16 be sufficiently particularized where officers have narrowed the time and
17 place of expected criminal activity through deduction or through a
18 reliable tip. *See, e.g., United States v. Paopao*, 469 F.3d 760, 766-67
19 (9th Cir. 2006) (holding there was reasonable suspicion for a protective
20 sweep based on a reasonably detailed tip from a reliable informant); *see*
21 *also Cortez*, 449 U.S. at 419-20.

22 Four law enforcement officers testified at the suppression hearing:
23 Pedrego (DHS), Suden (DHS), Downey (DHS) and Duckett (DOPS). The totality
24 of the circumstances factors going to the formulation of reasonable
25 suspicion are clearly addressed in the testimony from the suppression
26 hearing.

1 Officer Pedrego, as one of the law enforcement officers responsible
2 for the extended investigation into Defendant's alleged criminal
3 activities, testified as follows:

4 Q Okay. When did you get involved in this investigation
5 into the Bruces, Jagan, Tamelia, Jason, et cetera?

6 A I got involved in October of 2012 with this case.

7 Q All right. And when did the investigation first get
8 initiated?

9 A It was November of 2011.

10 Q Okay. And when you say you got involved in October of
11 2012, up to what point you were up to speed as to what had been
12 happening up until that point?

13 A Yes, sir.

14 Q Okay. And what was the nature of this investigation?
15 What was going on?

16 A What was going on is back in November of 2011 agents received
17 information that Jagan Bruce along with others were
18 coordinating the shipment of marijuana through the mail to
19 various cities throughout the east coast.

20 Q Okay. Now the conspiracy dates back to about 2010.

21 A 2010, yes.

22 Q 2010?

23 A Yes.

24 Q All right. And your information was that that's when
25 they were starting to ship marijuana back to the east coast of
26 the United States.

27 A Yes. When they opened the investigation in November of

1 2011 and they started looking into it, they saw that this had
2 been happening since 2010.

3 Q Okay. And how did you --

4 A June.

5 Q -- learn that? You said they were shipping. What were
6 they doing?

7 A They would actually package and wrap marijuana and some
8 various shipping locations, FedEx, UPS and just shipping it in
9 parcels through the -- through the mail.

10 Q Okay. As part of your involvement, were you involved
11 in surveillances of any first?

12 A Yes.

13 * * *

14 Q All right. Also were there other investigative
15 techniques that you used to be able to track that?

16 A Yes, there was.

17 Q And what was that?

18 A Using GPS trackers on vehicles that they were driving
19 and that would lead us to -- they would go onto certain shipping
20 locations where we knew that they had shipped there in the past.

21 Q And you had court authorization to track those
22 vehicles?

23 A Yes, we did.

24 (Tr. 9-11.)

25 Q All right. Now let's move forward to November 19th,
26 2012. Have you once again put Tamelia and Jagan Bruce under
27 surveillance?

1 A Yes, we have.

2 Q Early in the morning?

3 A Yes.

4 Q Did you have information that they were going to be
5 involved in a drug transaction later that day?

6 A Yes, we did.

7 Q Okay. And that was from a source?

8 A Yes.

9 Q All right. As a result of that information, did you
10 garner systems from other law enforcement agencies?

11 A Yes, we did.

12 Q And who -- what agencies were those?

13 A Arizona Department of Public Safety and the Pima County
14 Sheriff's Office.

15 Q Okay. Was there a pre-operational or a pre-op meeting with these other
16 officers and agents?

17 A Yes, there was.

18 Q And were they advised of information for example if
19 there was an ongoing investigation?

20 * * *

21 Q All right. But anyway, you provided information that
22 there would be an alias he used.

23 A Yes, we did.

24 Q By who?

25 A By Jagan.

26 Q Okay. And what was that alias?

27 A Jagan would use the alias Kia Smith.

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1 Q And what type of ID did he use?

2 A Arizona driver's license.

3 Q Okay. And that was provided to other officers and
4 agents earlier in the morning?

5 A Yes, it was.

6 Q Was Officer Duckett from DPS one of those officers who
7 was at that meeting and advised of that information?

8 A Yes, he was.

9 Q All right. And was he -- what else was he advised of
10 that morning regarding this investigation and those particular
11 targets?

12 A He was advised that Jagan Bruce was in fact an ICE
13 fugitive and was pending removed. He had never shown up to his
14 removal hearing, so he was a fugitive under ICE.

15 Q Okay. Was he also advised that there was a pending
16 marijuana transaction going to take place and that he would be
17 provided --

18 (Tr. 14-16.)

19 Q Was he provided information regarding the people that
20 may be in?

21 A Yes, he was.

22 Q And what information was that?

23 A He was brought information that the vehicle was going
24 to be a silver Chrysler 200 with California plates, that that's
25 the vehicle we had seen him in prior -- in prior surveillance
26 that Jagan and Tamelia had been in.

27 Q Okay. Did you also provide the tag number?

1 A Yes, we did.

2 Q Okay. Did you provide any information regarding
3 narcotics?

4 A We -- we didn't know the exact amount of the narcotics
5 that was going to be, but we know there would be narcotics involved.

6 Q Did you know what type?

7 A Marijuana.

8 Q Okay. What else did you advise him what might take
9 place later that day?

10 A We advised him that the Bruces were supposed to go to a
11 certain location, pick up the marijuana and leave and that they
12 would contain marijuana in their vehicle after they left their
13 vehi -- the house.

14 Q Did you indicate to him whether or not he could be
15 advised when the vehicle was mobile?

16 A Yes.

17 Q And whether or not it contained narcotics?

18 A Yes

19 (Tr. 17-18).

20 Officer Pedrego testifies particularly about the events that
21 occurred on November 19:

22 A I was stationed on Black Mesa Trail.

23 Q Okay. And why there?

24 A Because I was set up a few houses away from the --
25 their residence just keeping an eye on the house seeing what came
26 in and out.

27 Q Okay. And what -- what happened at some point in the

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1 morning there?

2 A At one point in the morning I witnessed Tamelia Bruce
3 and Jagan Bruce leave the house, get into the silver Chrysler 200 and
4 depart the area.

5 Q Okay. What did you do at that point?

6 A At that point, I called out over the radio to other
7 agents that were in the surveillance and told them the vehicle's
8 on the move occupied by Tamelia Bruce and Jagan Bruce.

9 Q Okay. Now do you have an indication from prior
10 information where they might be ending up?

11 A Yes, I did.

12 Q And where was that?

13 A I had information that they would be ending up at 244
14 West 33rd Street in Tucson, Arizona.

15 Q And based on that information, were surveillance units
16 placed in that area?

17 A Yes, they were.

18 Q Did they have a visual or -- of that location?

19 A Yes, they did.

20 Q And what's -- what's located at 244 West 33rd Street?

21 Is that a residence?

22 A It's a residence.

23 Q Do you call the agents who were on surveillance there?

24 A Yes, I do.

25 Q Who was that?

26 A It was specifically Daniel Suden, Special Agent Daniel
27 Suden -

1 (Tr. 18-19.)

2 Q All right. And what's your probable cause at that
3 point? What do you believe has happened at this point?

4 A At that point we believe that Jagan and Tamelia Bruce
5 had purchased marijuana. They had marijuana inside their vehicle
6 and they were transporting it.

7 Q Okay. And as a result, what did you or some of the
8 other agents do?

9 A We coordinated a traffic stop with Arizona Department
10 of Public Safety. We let them know that the vehicle was on the
11 move and would be traveling. We gave them out direction of travel where
12 they were going and DPS set up.

13 Q And you have been provided information in fact they
14 have taken that box of marijuana out of the house?

15 A Yes.

16 Q And that was source information?

17 A Yes, it was.

18 Q All right. Now you asked for DPS to do the -- the
19 traffic stop. Why is that?

20 A It's just a wall stop. It's what we do as a lot of
21 times plain clothes agents ask for a uniformed law enforcement
22 assistance to do traffic stops for us.

23 Q And often times these law enforcement officers will act
24 like they don't know about the investigation, they don't want to
25 tip off the Defendants as to an ongoing investigation --

26 A Yes.

27 Q -- is that right?

1 A Yes, sir.

2 (Tr. 23-24.)

3 Q Now you indicated that you didn't have real time
4 information as to what was going on in the house on November
5 19th, is that right?

6 A That's right.

7 Q But you did have information -- did you have cues --
8 for example, were you cued that there was in fact marijuana in
9 the house?

10 A Yes.

11 Q All right. Were you cued that in fact marijuana had
12 left the house?

13 A Yes.

14 Q Okay. And that's -- were you then advised by agents
15 that the time the marijuana had left the house was that Tamelia
16 and Jagan Bruce had left in their vehicle.

17 A Yes.

18 Q All right. Now in terms of the parcels, he -- I think
19 Mr. Scileppi said something about trackers on the parcels. The
20 GPS trackers are on vehicles, correct?

21 A Correct.

22 Q Now the tracking of the parcels seized through
23 warrants, correct?

24 A Correct.

25 (Tr. 35.)

26 Officer Duckett actually stopped and detained Defendant on November
27 19. He testified:

1 A I was provided with -- with a possible suspect
2 information with vehicle information and also that they were
3 conducting the surveillance and that they would contact me later
4 when they knew that -- that there was narcotics in the vehicle
5 and that I would stop the vehicle.

6 Q Okay. Did they give you a picture of Mr. Jagan Bruce?

7 A Yes, they did.

8 Q Did they indicate to you that he may or may not be
9 present at the time of the stop?

10 A That's true.

11 Q And did -- what else did they indicated if he was
12 present in terms of identification?

13 A If he was present, they stated that he would give me a
14 false ID.

15 Q And did that in fact happen?

16 A Yes, it did. (Tr. 72.)

17 Q What was the purpose of having you do the stop rather
18 than the federal agents?

19 A They -- at -- at the briefing they told me that they
20 were trying to wall off the investigation.

21 Q Okay. They didn't want to tip off that there was a
22 federal investigation going on.

23 A That's true.

24 Q Now so after that pre-operational meeting of the
25 morning of November 19th when you went about your regular duties,
26 what did you do?

27 A Basically my regular duties, but I stayed in the area

1 -- the Tucson area so that I would be available when they needed
2 me. (Tr. 74.)

3 Q And did the driver of the vehicle and then the
4 passenger match the general description of what you've been given
5 early in the morning?

6 A The passenger did. The driver information that I had
7 gotten came to me from their surveillance.

8 Q Okay. Did it do a lane -- make a lane violation at
9 that point?

10 A Yes, it did. It -- it made a change from the -- from
11 the slow speed lane to the high speed lane without signaling its
12 intent.

13 Q Was there a lot of traffic in the area at the time?

14 A Yes, it was heavy traffic at the time.

15 Q And so that alone is reason for you to stop the car?

16 A Yes, it was.

17 Q Now at that time while you were on this information
18 about the vehicle itself, what it may contain, what it has been
19 going on, correct?

20 A Yes.

21 Q ...What did you do?

22 A Basically I approached the vehicle on the passenger
23 side. I spoke with both the driver and the passenger. I noticed
24 some indicators of possible criminal activity afoot.

25 Q What would that be?

26 A They were -- I believe they were not the -- the renters
27 of the vehicle. They were -- they appeared to be excessively

1 nervous and, you know, as I spoke to them. I went ahead and had the driver
2 step out and walk by to my patrol car and spoke with
3 the passenger. He seemed a bit evasive when I was talking to
4 him.

5 Q Okay. Did you at some point have a chance to check out
6 the paperwork that went with the rental vehicle?

7 A Yes, I did.

8 Q And were you able to determine that neither the driver
9 nor the passenger were on that paperwork?

10 A Yes, sir.

11 Q So it was a third party rental?

12 A Yes, it was.

13 Q Did that provide any suspicion to you at all?

14 A Yes, it did.

15 Q And why?

16 A That's a common tactic that -- that the drug
17 trafficking organizations use to move drugs around is -- is to --
18 somebody else will rent the vehicle and then somebody else will
19 drive it.

20 Q Okay. Did you ask whether you could search the vehicle
21 at that point?

22 A Yes, I did.

23 Q And what did she say?

24 A She said no.

25 Q Okay. So what did you do at that point?

26 A At that point, I went ahead and had Mr. Bruce step out
27 of the vehicle. I advised them -- both of them at that time that

1 -- that the other officer could smell marijuana in the vehicle
2 and that I was going to my utilize my drug detection K-9 to
3 perform a sniff of the vehicle.

4 Q Was that standard?

5 A Yes, it is. (Tr. 80.)

6 In a traffic-stop setting, the *Terry* condition of a lawful
7 investigatory stop is met whenever it is lawful for police to detain an
8 automobile and its occupants pending inquiry into vehicular violation;
9 police need not have, in addition, cause to believe any occupant of
10 vehicle is involved in criminal activity. *Arizona v. Johnson*, 555 U.S.
11 323 (2009). In Fourth Amendment terms, a traffic stop entails a
12 "seizure" of the driver even though the purpose of the stop is limited
13 and the resulting detention quite brief. *Brendlin v. California*, 551 U.S.
14 249 (2007). In evaluating the reasonableness of the length of detention
15 after an investigatory stop, a court must consider whether the police
16 were acting in a swiftly developing situation, whether suspect's actions
17 contributed to the added delay, and whether, in attempting to confirm or
18 dispel his suspicions of illegal activity, officer used threats of force,
19 unnecessary delays, exaggerated displays of authority or other coercive
20 tactics. *Liberal v. Estrada*, 632 F.3d 1064 (9th Cir. 2011).

21 Officer Duckett testified that he had an independent valid basis
22 to conduct a pretextual traffic stop, see *Whren v. United States*, 517
23 U.S. 806, 812-13 (1996), and that he asked questions unrelated to the
24 purpose of the traffic stop that did "not prolong an initially lawful
25 stop." *United States v. Turvin*, 517 F.3d 1097, 1100 (9th Cir. 2008).
26 Furthermore, Officer Duckett developed reasonable suspicion to justify
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1 his questioning during the traffic stop. *United States v. Mendez*, 476
2 F.3d 1077, 1080 (9th Cir. 2007).

3 The "collective knowledge" doctrine applies to this case. This
4 doctrine "allows courts to impute police officers' collective knowledge
5 to the officer conducting a stop, search, or arrest." *See United States*
6 *v. Villasenor*, 608 F.3d 467, 475 (9th Cir.2010). Where one officer knows
7 facts constituting reasonable suspicion, "and he communicates an
8 appropriate order or request, another officer may conduct a warrantless
9 stop" without having been told the facts justifying the suspicion. *See*
10 *United States v. Ramirez*, 473 F.3d 1026, 1036-37 (9th Cir.2007). Officer
11 Duckett obtained information from the pre-op meeting and the doctrine
12 applies to "aggregate the facts known to each of the officers involved,"
13 regardless of whether the information giving rise to probable cause was
14 actually communicated to the troopers. *Id.* at 1032; *see also United*
15 *States v. Sutton*, 794 F.2d 1415, 1426 (9th Cir. 1986).

16 Applying the collective knowledge doctrine, Officers Duckett,
17 Pedrego, Suden and Downey had knowledge that a specific vehicle, the
18 rented silver Chrysler 200, would contain controlled substances at a
19 given time and they would notify Officer Duckett of where and when. They
20 also provided a description of the driver and the passenger. The officer
21 located the vehicle after the suspected drug transaction had taken place,
22 and after speaking to the other agents, the officer followed the vehicle
23 and had reasonable suspicion to pull the vehicle over when the driver,
24 Tamelia Bruce, made a lane change violation. These facts, taken
25 together, easily establish reasonable suspicion to prolong detention for
26 further investigation. The collective knowledge of the law enforcement
27 officers who were involved in the long-term investigation in the

1 Defendants' alleged drug trafficking activities provided reasonable
2 suspicion to believe that Defendant had narcotics in the car. *United*
3 *States v. Hensley*, 469 U.S. 221, 232 (1985); *United States v. Burkett*,
4 612 F.3d 1103, 1107 (9th Cir. 2010).

5 The Supreme Court has made clear that an officer's subjective
6 thoughts play no role in the Fourth Amendment analysis. *Whren v. United*
7 *States*, 517 U.S. 806, 811-13 (1996). More specifically, the fact that
8 officers acted on one rationale "would not foreclose the [government]
9 from justifying [the search] by proving probable cause." *Florida v.*
10 *Royer*, 460 U.S. 491, 507 (1983); *United States v. Willis*, 431 F.3d 709,
11 715 (9th Cir.2005) ("*Whren* stands for the proposition that if the
12 officers have probable cause to believe that a traffic violation
13 occurred, the officers may conduct a traffic stop even if the stop serves
14 some other purpose.") Prior decisions have applied the collective
15 knowledge doctrine in at least two situations. The first situation is
16 where law enforcement agents are working together in an investigation but
17 have not explicitly communicated the facts each has independently
18 learned. The facts of this case illustrate a second situation in which
19 the collective knowledge doctrine applies: where an officer (or team of
20 officers), with direct personal knowledge of *all* the facts necessary to
21 give rise to reasonable suspicion or probable cause, directs or requests
22 that another officer, not previously involved in the investigation,
23 conduct a stop, search, or arrest. The application of the collective
24 knowledge doctrine to such situations has its roots in numerous decisions
25 of the Supreme Court and lower courts. The collective knowledge doctrine
26 includes no requirement regarding the *content* of the communication that
27 one officer must make to another. Where one officer knows facts

1 constituting reasonable suspicion or probable cause (sufficient to
2 justify action under an exception to the warrant requirement), and he
3 communicates an appropriate order or request, another officer may conduct
4 a warrantless stop, search, or arrest without violating the Fourth
5 Amendment. *Ramirez*, 473 F.3d at 1036.

6 In this case, based on the totality of the circumstances, which
7 includes the collective knowledge of the agents in the on-going long term
8 investigation, this Court concludes, after conducting a de novo review
9 of the record, that the stop did not violate the Fourth Amendment. The
10 collective knowledge doctrine generally applies where law enforcement
11 agents are working together in an investigation but have not explicitly
12 communicated the facts each has independently learned, and where an
13 officer with direct personal knowledge of all the facts necessary to give
14 rise to reasonable suspicion directs or requests that another officer
15 conduct a stop, search, or arrest. *United States v. Villasenor*, 608 F.3d
16 467 (9th Cir. 2010). The assessment of reasonable suspicion is to be made
17 in light of the totality of the circumstances; even when factors
18 considered in isolation from each other are susceptible to an innocent
19 explanation, they may collectively amount to a reasonable suspicion.
20 *United States v. Cotterman*, 709 F.3d 952 (9th Cir. 2013). Possible
21 criminality is key to any *Terry* investigatory stop or prolonged
22 detention. *Melendres v. Arpaio*, 695 F.3d 990 (9th Cir. 2012); *United*
23 *States v. Miguel*, 368 F.3d 1150, 1153 (9th Cir. 2004) ("Reasonable
24 suspicion is formed by specific, articulable facts which, together with
25 objective and reasonable inferences, form the basis for suspecting that
26 the particular person detained is engaged in criminal activity.")


1 Further, the detention was based on a reasonable, articulable
2 suspicion that Defendant was involved in ongoing criminal activity
3 unrelated to the traffic violation. *United States v. Miguel*, 368 F.3d
4 1150, 1153 (9th Cir. 2004) ("Reasonable suspicion is formed by specific,
5 articulable facts which, together with objective and reasonable
6 inferences, form the basis for suspecting that the particular person
7 detained is engaged in criminal activity.") Possible criminality is key
8 to any *Terry* investigatory stop or prolonged detention. *Melendres v.*
9 *Arpaio*, 695 F.3d 990 (9th Cir. 2012).

10 Based on the foregoing, the Court will adopt the Report and
11 Recommendation in its entirety.

12 Accordingly, after conducting a de novo review of the record,
13 **IT IS ORDERED** that the Court **ADOPTS** the Report and Recommendation
14 (Doc. 170) in its entirety. The Objections (Doc. 171) raised by the
15 Defendant are **OVERRULED**.

16 **IT IS FURTHER ORDERED** that Defendant's Motion To Suppress (Doc.
17 133) is **DENIED**.

18 DATED this 4th day of December, 2013.

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22 David C. Bury
23 United States District Judge
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